

APPEAL NO. 021721
FILED AUGUST 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 18, 2002. The hearing officer determined that the appellant (carrier herein) was liable for spinal surgery. The carrier appeals, arguing that the hearing officer erred in permitting the respondent (claimant herein) to testify concerning her surgery and that the hearing officer incorrectly found that the two doctors in the spinal surgery second opinion process concurred that the claimant needed surgery. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206) applies to this case. The hearing officer, as the finder of fact, resolves the conflicts and inconsistencies in the evidence and determine what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We specifically find no merit in the carrier's argument that the hearing officer erred in allowing the claimant to testify concerning her surgery. Clearly, the opinion of the doctors is the controlling evidence in a spinal surgery case. However, this does not mean that the claimant is not permitted to testify to provide some context. In any case, it is clear that the hearing officer relied on the medical evidence in making her decision and any error in admitting the claimant's testimony was, therefore, harmless. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The carrier contends that its second opinion doctor did not concur with surgery in that while he agreed with surgery, he suggested additional surgery should be performed. As the surgeon amended his request to include this level, and the carrier's second opinion doctor concurred with amendment, we find no error in the hearing officer finding that the surgeon and the carrier's second opinion doctor concurred in the need for surgery.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge